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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,679	01/08/2002	Rita Lorena Salazar-Leal	214314US30	9035

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
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EXAMINER

SMALLEY, JAMES N

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary	Application No. 10/038,679	Applicant(s) SALAZAR-LEAL, RITA LORENA	
	Examiner James N Smalley	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because of the following informalities:
 - The drawings in figures 1 and 2 use cross-sectional hatching for metal, but claims plastic. See MPEP 608.02.
 - Cross-hatching is used to designate cross-sectional surfaces, and not interior surfaces as pictured in figures 1 and 2.
 - Multiple drawings for each figure must be denoted with subcharacters. For example: If figure 1 as more than one diagram, each diagram must be denoted 1(a), 1(b), etc.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims rejected under 35 U.S.C. 102(b) as being anticipated by Elele '555.

Elele '555 discloses a Temperature Indicating Container and Lid Aparatus comprising (cl. 1) a cap body comprised of a plastic composition (see col. 6, lines 54-55), and at least one thermochromic material in contact with or admixed with the plastic composition (element 27), the thermochromic material selected such that the cap has a visually altered appearance when the cap temperature changes within a temperature range of -25 to 85°C (see col. 5, lines 40-62), wherein the cap is adapted to be removably secured to a beverage container (Examiner notes that although applicant notes Elele '555 does not explicitly state the lid is removable, examiner cites Webster's II New Riverside University Dictionary, Houghton Mifflin Publishing Company, 1994, which defines lid as, "a hinged or removable cover for a hollow receptacle."), the container having an opening through which a beverage in the container can be dispensed from the container, and to cover the opening of the beverage container, (cl. 2) wherein the temperature range is -10 to 50°C , (cl. 3) wherein the temperature range is 0 to 25°C , (cl. 4) wherein the temperature range is 5 to 20°C (Examiner cites col. 5, line 44, where diacetylene polymer in a polyethelyne matrix changes from blue to red at 16°C), (cl. 5) wherein the plastic composition comprises at least one thermoplastic polymer resin, (cl. 6) wherein the material comprising the cap further comprises at least one thermoplastic polymer resin selected from the group consisting of polypropylene, polyethylene, copolymers of polypropylene and polyethylene, and combinations thereof, (cl. 7) wherein the polyethylene is selected from the group consisting of linear, high density, low density polyethylene, and combinations thereof (Examiner cites col. 6, lines 54-55, where Elele discloses the lid can be made from plastic materials), (cl. 8) wherein the visibly altered appearance comprises a change in color of the cap (see col. 5, lines 40-54, where

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Elele discloses various potential thermochromic combinations and their related color changes), (cl. 9) wherein the cap is a one-piece cap, (cl. 10) wherein the cap comprises more than one piece (Examiner notes lid 24 appears to comprise one piece, but Elele discloses in col. 6, lines 4-6, that the lid may also include a signal assembly 32/34), (cl. 11) wherein the cap is adapted to provide a hermetic seal on the container (Examiner notes there are no visible apertures on the lid).

Regarding claim 12, an article comprising a beverage container having an opening through which a beverage in the container can be dispensed from the container, and a cap adapted to be removably secured to the container to cover the opening, wherein a material comprising the cap comprises at least one thermochromic material, the thermochromic material selected such that the cap has a visually altered appearance when the cap temperature changes within a temperature range of -25 to 85°C , (cl. 13) further comprising a beverage, and wherein the beverage is carbonated or non-carbonated (Examiner notes the claim language of claim 13 refers to the intended use of the product and does not structurally limit the present application), (cl. 14) a method for making the article as claimed in claim 12 comprising contacting the cap with the container (Examiner notes the embodiment in figures 5 and 6 contains a lid, which contacts with the container).

Regarding claim 16, comprising a cap body comprised of a plastic composition, a means for having a visually altered appearance when the cap temperature changes within a temperature range of -25 to 85°C , a means for removably securing the cap to a beverage container, the container having an opening through which a beverage in the container can be dispensed from the container, and a means for covering the opening.

Regarding claim 17, an article comprising a beverage container having an opening

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through which a beverage in the container can be dispensed from the container, and a cap, comprising a means for removably securing the cap to the container, a means for covering the opening, and a means for having a visually altered appearance when the cap temperature changes within a temperature range of -25 to 85 °C, (cl. 18) further comprising a method for making the article, comprising contacting the cap with the container (Examiner notes the embodiment in figures 5 and 6 contains a lid, which contacts with the container).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elele '555 as applied above to claim 12.

Elele does not disclose that further comprising, prior to the contacting, filling the container with the beverage.

Examiner takes Official Notice, noting the embodiment of figure 6 depicts an orientation-changeable signal assembly that displays the temperature of the contents of the container. In col. 6, line 49, Elele discloses this container could contain coffee, a beverage. Because there are no visible apertures on the lid, or any other means for pouring coffee into the container through the lid, it would be inherent that the liquid would be added before the lid to achieve the depicted arrangement of functionality of the orientation-changeable signal assembly.

Conclusion

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4,905,851 and US 5,839,592 disclose the use of changing colors on a plastic bottle cap. US 4,933,525 discloses the use of color changing on the lid of a microwave-safe container. US 6,513,379 discloses the use of thermochromic plastic compositions in novel beverage applications. US 4,840,014 discloses it is known to bottle beverage containers by first filling them with the liquid, and then applying a cap.

* * *

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N Smalley whose telephone number is (703) 605-4670. The examiner can normally be reached on M-Th 8-5:30, Alternate Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

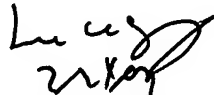
Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/

jns
February 20, 2003


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